

VIRGINIA BOARD OF MEDICINE
FULL BOARD MINUTES

Thursday, October 28, 2010

Department of Health Professions

Richmond, VA

CALL TO ORDER: The meeting convened at 8:48 a.m.

MEMBERS PRESENT: Karen Ransone, MD, President
Claudette Dalton, MD, Vice-President
Stuart Mackler, MD, Secretary-Treasurer
Deeni Bassam, MD
Sandra Anderson Bell, MD
J. Randolph Clements, DPM
William Epstein, MD
Stephen Heretick, JD
Valerie Hoffman, DC
Gopinath Jadhav, MD
Jane Sheffield Maddux
Jane Piness, MD,
Wayne Reynolds, DO
Michael Signer, Ph.D., JD

MEMBERS ABSENT: Jennifer Lee, MD
William Mann, Jr., MD
Roderick Mathews, JD
Juan Montero, MD

STAFF PRESENT: William L. Harp, MD, Executive Director
Jennifer Deschenes, JD, Deputy Executive Director, Discipline
Barbara Matusiak, MD, Medical Review Coordinator
Colanthia Morton Opher, Operations Manager
Arne Owens, DHP Chief Director
Amy Marschean, Assistant Attorney General
Elaine Yeatts, DHP Senior Policy Analyst

OTHERS PRESENT: Mike Jurgensen, MSV
Bill Ward, VCA
David Garland, American Institute of Toxicology
Tyler Cox, HDJN
W. Scott Johnson, HDJN

ROLL CALL

EMERGENCY EGRESS PROCEDURES

Dr. Dalton read the emergency egress procedures for Conference Room 2.

APPROVAL OF THE JUNE 10, 2010 MINUTES

Dr. Mackler moved to accept the minutes of June 10, 2010 as presented. The motion was seconded and carried unanimously.

ADOPTION OF AGENDA

Dr. Piness moved to adopt the agenda as presented. The motion was seconded and carried unanimously.

INTRODUCTION OF NEW BOARD MEMBERS

Dr. Ransone introduced the two new Board members in attendance. Dr. Clements and Ms. Maddux introduced themselves and provided a brief overview of their background. Board members and staff gave them a hearty welcome.

INTRODUCTION OF GUESTS

Dr. Harp introduced and welcomed the members of the public.

PUBLIC COMMENT ON AGENDA ITEMS

Mr. Garland addressed the Board regarding his concerns about prescription drug abuse. He began by thanking the Board for their involvement and support of the Prescription Monitoring Program. Mr. Garland indicated he had known a family that was affected by prescription drug abuse and stated that had the prescription monitoring program been available, it might well have served to deter drug-seeking behavior.

He stated that his purpose in addressing the Board was to encourage the use of drug screens in the practice of pain management. He commented that these screenings could identify the use of prescription and illicit drugs, and along with physician intervention and patient education, help in the derivation of an effective treatment plan and also reduce diversion.

Mr. Garland then fielded questions regarding the integrity of the test results and his company's stance on standing behind what is reported. Mr. Garland stated that, to his knowledge, the toxicology reports have withstood all legal challenges. The Board

thanked him for this comments.

NEW BUSINESS

DHP DIRECTOR'S REPORT

Arne Owens, Chief Deputy, DHP addressed the Board in Dr. Reynolds-Cane's absence.

National Take Back Day

Mr. Owens highlighted the outcome of the National Take Back Day initiated by the DEA and supported by this agency and a number of sister state agencies. He advised that nearly 2 ½ tons of unused drugs were collected throughout the Commonwealth. Dr. Harp gave credit to Michele Leonhart, Acting Administrator of DEA, for her leadership and guidance that made this effort a national success.

Ms. Yeatts addressed the Board's inquiry regarding the establishment of Take Back Day as an ongoing program. She advised that a previous study indicated it would cost upwards of \$850,000 annually to cover the cost for law enforcement and pharmacist participation, and for proper disposal, including incineration.

Dr. Ransone suggested this topic be addressed by the Executive or Legislative Committee.

Prescription Monitoring Program

Mr. Owens informed the Board that the Prescription Monitoring Program currently has over 8,000 registered users and processed over 10, 000 requests for the week of October 9th. Requests are up 100% from the beginning of the year.

Virginia Health Reform

Mr. Owens advised that the work of this task force was ongoing. He noted that it is focused on the medical and insurance reform issues at hand, the capacity of the physician workforce, and technology purchases. Mr. Owens advised that Dr. Reynolds-Cane is a Senior Advisor to this committee and that a report is expected to be presented to the Governor this December.

New Board Member Orientation

Dr. Harp commended Mr. Owens for his leadership in the planning of a more focused, streamlined and informative orientation for new board members that took place on October 27, 2010. He mentioned the excellent presentation given by Mr. Heretick giving a citizen member's perspective on mission, participation and accountability and

advised that it was well received. Dr. Harp also mentioned that Dr. Bassam, Dr. Mann, and Dr. Clements were in attendance. Advisory Board members from the professions of acupuncture, respiratory therapy and physician assisting were also present at the orientation.

Mr. Owens thanked the board executive directors and other staff around DHP that worked so well together to create a superior experience for the new Board and Advisory Board members.

REPORT OF OFFICERS AND EXECUTIVE DIRECTOR

OFFICER'S REPORT

Dr. Ransone reported that she and Dr. Reynolds-Cane had both attended an FSMB event in Alexandria with the leadership of FSMB. She noted that the focus was on health information technology and how to strengthen the relationship between practitioners and our elected officials.

Dr. Dalton, Vice-President, briefly mentioned continued competency issues and noted that the Federation's document on Maintenance of Licensure would soon be released.

Dr. Mackler, Secretary-Treasurer, deferred financial matters to Dr. Harp.

EXECUTIVE DIRECTOR'S REPORT

Revenue and Expenditures Report

Dr. Harp advised that the most recent report indicated the Board to be well within budget. However, he pointed out that the cost for IT services was continuing to climb. Mr. Owens advised that discussions are currently underway to discover greater efficiencies that should help limit IT costs to some extent.

HPMP Statistics

Medicine currently has 132 enrollees. This report was provided for information only with no action required.

Allied Health Board Update

Dr. Harp advised that the Board of Medicine has essentially become the Allied Health Board. He stated that in addition to the seven existing advisory boards--Acupuncture, Athletic Training, Midwifery, Occupational Therapy, Physician Assistants, Radiology

Technology and Respiratory Care Practitioners--the Advisory Board on Polysomnographic Technology would be added in the near future. He also reported that the Board of Health Professions has suggested that the surgical assistants and surgical technologists be assigned to the Board of Medicine in the future.

Key Performance Measures

Dr. Harp reported that according to the the data available at the end of FY2010, Dr. Matusiak is closing cases faster than they are coming into the Board. He noted that the Board has continued to close more than 90% of cases in 250 days or less, and the entire discipline group is to be commended for its performance. He also noted that Ms. Powers and her team in the licensing division are continuing to doing a great job in meeting their performance measures of licensing quickly and providing excellent customer service.

Ad Hoc on Office-Based Surgery

Dr. Mackler advised that the initial meeting of this group was well attended with numerous stakeholders represented around the table. He stated that it was a very challenging and informative meeting with several issues being identified. The next meeting on November 4th will better define the issues and consider a recommendation to be presented to the Full Board in February 2011. Dr. Dalton commented that she thinks there is a bigger problem than the statistics show since it is difficult to capture every complication or adverse outcome. She stated that there are some national billing changes coming for moderate sedation services, and these changes may serve to reduce the volume of office-based surgery procedures.

Ad Hoc on Continuing Competency

Dr. Dalton stated that this group will be meeting in November. She advised that their focus will be on the results of the FSMB study on maintenance of licensure approved at the Annual Meeting in April, and on maintenance of competency and re-entry measures. She informed the Board there was an abundance of activity on re-entry and a wealth of articles that capture the assessment for remediation. She indicated there may be an opportunity for Virginia to obtain a grant for a pilot MOL program and/or reentry.

Midwifery Workgroup

Dr. Ransone advised that she is seeking volunteers to serve on the Midwifery and Medication workgroup.

Prescription Monitoring Statistics

Dr. Harp reported on the program statistics for the 3rd quarter. He noted that with the

inception of automated software, information is immediately available to program users. This immediacy will undoubtedly help in identifying patients that may have problems with addiction or may be involved in diversion. He noted that a number of states with PMP programs are working together to achieve interoperability of data.

FSMB Participation Report

Dr. Harp acknowledged the board members and staff who served with FSMB in various roles this past year and encouraged everyone to get involved as much as their situations allow. This report was for information only.

Board Members - Coming and Goings

Dr. Harp extended Dr. Shapiro's best wishes and her thanks to all for the solid working relationships she had with her fellow Board members and Board staff. Dr. Harp acknowledged the appointment and reappointment of the Advisory Board members listed in the report.

COMMITTEE AND ADVISORY BOARD REPORTS

Committee Appointments

Dr. Ransone will be reviewing the current assignments and will identify where new members can serve.

Dr. Bell moved to accept the remaining Committee and Advisory Board meeting minutes en bloc. The motion was seconded and carried unanimously.

OTHER REPORTS

Assistant Attorney General

Ms. Marschean gave an update on legal matters involving the Board.

Board of Health Professions

No report.

Podiatry Report

No report.

Chiropractic Report

No report.

NEW BUSINESS

Regulatory Actions

Chart of Regulatory Actions

This report was provided for information only. No action was required.

Adoption of a Notice of Intended Regulatory Action for the practice agreements and supervision of physician assistants

Dr. Dalton moved to adopt the NOIRA for promulgation of amendments to the regulations governing the practice of physician assistants. The motion was seconded and carried unanimously. Ms. Yeatts advised that there was no proposed draft language at this time.

Reports to the General Assembly

Ms. Yeatts advised that the annual report on the number of competency assessments required for practitioners licensed by the Board of Medicine has been provided to the General Assembly. She noted that legislation has been proposed that will increase the threshold for qualifying claims from \$10,000 to \$75,000 and extend the time for completion of the assessment from 12 months to 18 months. This would, in most instances, provide the licensee with the option of allowing his/her license to lapse, essentially tolling the evaluation. The Board will be advised in December if these proposed changes will be included in DHP's legislative proposals.

Physician Assistant Survey

Elizabeth Carter, PhD addressed the Board regarding the PA survey that was modeled after the medicine and surgery survey. The Board identified and discussed several concerns and recommended some options for Dr. Carter to present to the Council. This survey will be included in the renewal process during the 2011 renewal cycle.

Respiratory Care recommendation for AG opinion on CPAP and BiPAP

Dr. Harp spoke to the background discussions related to this request from the Advisory Board on Respiratory Care. The Advisory is asking for guidance in light of the fact that three sets of laws-polysomnography, respiratory care and durable medical-all bear on the issues of CPAP, BiPAP and mask fittings.

Ms. Marschean advised that in terms of an official opinion, the OAG tends not to intervene in scope of practice issues. The boards with those practicing in the profession are in a far better position to address these issues. She suggested that these groups approach the General Assembly and ask for clarification on these issues and their scope of practice.

After discussion the Board agreed that promulgating regulation that prohibits the company delivering the equipment from performing the initial mask fitting was unnecessary and not under the Board's purview.

Dr. Hoffman moved to deny the motion to seek an OAG opinion on this issue. The motion was seconded and carried unanimously.

Dr. Montero moved to develop an ad hoc committee to look into this issue. The motion was not seconded.

Dry Needling by Chiropractors

Bill Ward, DC from Fredericksburg addressed the Board and asked their support in authorizing doctors of chiropractic to perform dry needling under their scope of practice. He outlined the training to be provided to chiropractors prior to undertaking this procedure.

After some discussion, the Board agreed that this procedure is to be viewed as any other new procedure to be performed by a practitioner in his/her scope of practice. It is incumbent upon the practitioner to ensure he/she is properly educated and trained prior to performing dry needling with patients.

Dr. Dalton moved that no action be taken since the procedure appears to fall within the chiropractic scope of practice. The motion was seconded and carried unanimously.

FSMB Request for comment on the use of the title "doctor" in clinical settings

Dr. Harp advised that the Federation's Board of Directors has distributed a report entitled Use of the "Doctor" Title in Clinical Settings and is now asking the state boards to provide feedback on the report. The key elements included:

Recommend support for the Scope of Practice Partnership and other stakeholders in supporting state legislation to provide transparency for patients seeking a health care professional,

Recommend support for the Healthcare Truth and Transparency Act of 2010 designed to assure patients receive accurate information about the qualifications and licensure of health care professionals, and,

Recommend that the FSMB House of Delegates adopt a policy statement requiring health care professionals to clearly disclose and identify the branch of the healing arts in which they are licensed.

Ms. Yeatts advised that these requirements are already spelled out in 54.1-2903 chapter of the Virginia Code.

After brief discussion, the board unanimously agreed to support the language of the Federation. Board staff will forward the comments to the FSMB by November 12th.

FSMB Request for comment on reporting withdrawals of applications for licensure

Dr. Harp advised that FSMB is still accepting comments on its report entitled "Reporting of Withdrawals of Licensure Applications to the FSMB". The key elements of the report include:

Recommend that state medical and osteopathic boards report all board action and non-administrative license withdrawals to the FSMB's Board Action Data Bank no more than 30 days after the actions are taken,

Recommend that the *Essentials of a Modern Medical and Osteopathic Practice Act* (Section V A.4) be revised to read: a list of all jurisdictions, U.S. or foreign, in which the applicant is licensed, has applied for licensure to practice medicine or is authorized or has applied for authorization to practice medicine, including all jurisdictions in which any license application or authorization has been withdrawn, and,

Recommend that the *Elements of a Modern State Medical and Osteopath Board* (Section K 17) be revised to read: Report all final disciplinary actions, *non-administrative license withdrawals*, license denials and voluntary license limitations or surrenders related to physicians, with any accompanying license limitations or surrenders related to physicians, with accompanying Board orders, findings of fact and conclusions of law, to the Federation Physician Data Center of the Federation of State Medical Board of the United States and to any other data repository by law, and report all such actions, denials and limitations or surrenders related to other licensees, with the same supporting documentation, to the appropriate national practitioner data repositories recognized by the Board or required by law.

Dr. Harp outlined the current process of the Credentials Committee and the Board, pointing out the opportunities within the process for the applicant to withdraw.

After discussion, Dr. Hoffman moved not to support this recommendation until clarification is provided on what exactly FSMB wants, and how the collected information will be used. The motion was seconded and carried unanimously.

Licensing Report

In Ms. Powers' absence, Dr. Harp reported that the Board currently licenses 15 professions, has 55,000 licensees and the licensing division continues to meet its key performance measures. He informed the Board that two additional staff members have been added to this division to better handle the current workload and to absorb the professions that will soon be assigned to the Board.

Discipline Report

Ms. Deschenes provided a verbal update on the current disciplinary activity of the Board. She noted that there were 600 open cases, 400 in investigations, 160 at probable cause, and 90 cases waiting for review.

Ms. Deschenes reminded the Board that in June 2007, Board staff was delegated the authority to close Priority C and D cases. She reviewed the mandatory suspension law for the Board. It states that in situations where a licensee is convicted of a felony or loses his/her license by is suspension or revocation in another state, per 54.1-2409, Virginia must suspend the license. Ms. Deschenes recommended that the Board consider delegating the authority to staff to close cases in which a mandatory suspension has been entered.

Dr. Bell moved that delegation be extended to include closing cases in which a mandatory suspension has occurred. The motion was seconded and carried unanimously.

Announcements

Staff reminded the Board of their hearing assignments for the remainder of the day.

Adjournment: With no other business to conduct, the meeting adjourned at 12:22 p.m.

Next scheduled meeting: TBA

Karen Ransone, M.D.
President, Chair

William L. Harp, M.D.
Executive Director

Colanthia M. Opher
Recording Secretary